

**MINUTES
URBAN COUNTY PLANNING COMMISSION
ZONING ITEMS PUBLIC HEARING**

March 28, 2013

- I. **CALL TO ORDER** – The meeting was called to order at 1:30 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Eunice Beatty; Will Berkley; Carla Blanton; Patrick Brewer; Mike Cravens; Karen Mundy; Mike Owens, Chair; Frank Penn; Carolyn Plumlee; Lynn Roche-Phillips (arrived at 1:35 p.m.); and William Wilson (arrived at 1:35 p.m.).

Planning staff members present: Chris King, Director; Bill Sallee; Jimmy Emmons; Tom Martin; Chris Taylor; and Stephanie Cunningham. Other staff members present were Tracy Jones, Department of Law; and Captain Charles Bowen, Division of Fire and Emergency Services.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Cravens, seconded by Mr. Brewer, and carried 9-0 (Roche-Phillips and Wilson absent) to approve the minutes of the February 14, 2013, and February 28, 2013, Planning Commission meetings.

III. **POSTPONEMENTS AND WITHDRAWALS**

1. **ARNOLD PROPERTIES, LLC, ZONING MAP AMENDMENT & ARNOLD PROPERTIES, LLC, ZONING DEVELOPMENT PLAN**

- a. MAR 2013-5: ARNOLD PROPERTIES, LLC (5/5/13)* - petition for a zone map amendment from a Two Family Residential (R-2) zone to a Planned Neighborhood Residential (R-3) zone, for 0.253 net and gross acre, for property located at 1165 Jones Trail.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan recommends Medium Density Residential (MD) future land use for the subject property. The petitioner has requested a Planned Neighborhood Residential (R-3) zone in order to construct a multi-family residential structure and associated off-street parking.

The Zoning Committee made **no recommendation** on this request.

The Staff Recommended: **Disapproval**, for the following reasons:

1. The requested zone change is not in agreement with the Comprehensive Plan because the proposed density (15.8 d.u./acre) exceeds the maximum recommended Medium Density land use (10 d.u./acre). Furthermore, the proposed development is not supported by the adopted 2012 Goals and Objectives (specifically Goals A.2.a, A.3.b, & D.1.a).
2. The existing R-2 zoning provides an allowable residential density which is in agreement with the land use recommendation of the Comprehensive Plan.
3. The requested R-3 zoning is inappropriate at this time, as the property is an isolated tract. Furthermore, the roads, pedestrian systems, and other design features that create a neighborhood are insufficient to accommodate the proposed increase in intensity of this use, thereby making the requested zone change inappropriate and unwise for the subject property. The existing R-2 zoning is more appropriate for the subject property until such time as these issues can be adequately addressed.
4. There has not been an unanticipated change in the economic, physical, or social nature within the area since the adoption of the Comprehensive Plan which has substantially altered the basic character of the area.

- b. ZDP 2013-20: ARNOLD PROPERTIES, LLC (5/5/13)* - located at 1165 and 1173 Jones Trail.
(Trinity Engineering)

Note: The purpose of this amendment is to add eight residential units and parking.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Remove existing dumpster location.
9. Addition of owner/developer information.
10. Denote construction access location.

* - Denotes date by which Commission must either approve or disapprove request.

11. Clarify open space provided.
12. Denote building height (in feet) and building dimensions (not envelopes).
13. Denote stormwater detention location.
14. Document ability to comply with tree canopy requirements and denote tree preservation plan/tree inventory map, as necessary.
15. Revise note #7.
16. Discuss plan status.
17. Discuss landscaping and screening adjacent to R-2 zones.
18. Discuss proposed access and one-way circulation.

Petitioner Representation: Anthony Justice, Trinity Engineering, was present representing the petitioner. He requested a one-month postponement of this item

Citizen Comments: Henry Shelby, 152 Greenway Lane, was present representing his mother, who owns property in the vicinity of the subject property. He said that he and his mother were in agreement with the petitioner's request for a one-month postponement.

Action: A motion was made by Ms. Plumlee, seconded by Mr. Brewer, and carried 9-0 (Roche-Phillips and Wilson absent) to postpone MAR 2013-5 and ZDP 2013-20 to the April 25, 2013, Planning Commission meeting.

2. PATRICIA DONOGHUE ZONING MAP AMENDMENT & ETHINGTON AND ETHINGTON PROPERTY (BOWMAN HOUSE) (AMD.) ZONING DEVELOPMENT PLAN

- a. MARV 2013-3: PATRICIA DONOGHUE (AMD.) (4/7/13)* - an amended petition for a zone map amendment from a Single Family Residential (R-1D) zone to a Townhouse Residential (R-1T) zone, for 0.95 net (1.28 gross) acres, for property located at 4145 Harrodsburg Road (a portion of). Dimensional variances are also requested with this zone change.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 11) recommends Low Density Residential future land use for the subject property. The petitioner proposes to remove the existing residence and construct three townhouse units, for a density of 3.16 dwelling units per net acre.

The Zoning Committee Recommended: **Approval**, for the reason provided by staff.

The Staff Recommended: **Approval**, for the following reason:

1. The requested Townhouse Residential (R-1T) zone is in agreement with the 2007 Comprehensive Plan, for the following reasons:
 - a. The Plan recommends Low Density Residential (LD) future land use for the subject property, defined as 0-5 dwelling units per net acre. This would suggest a maximum of 4 dwelling units for the subject property.
 - b. The applicant proposes 3 townhouse dwelling units on the 0.95-acre subject property, at an overall residential density of 3.16 units per net acre.
2. This recommendation is made subject to approval and certification of ZDP 2013-15: Ethington & Ethington Property (Bowman House) (Amd.), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the property shall be subject to the following use and buffering restrictions via conditional zoning:
 - a. Existing trees shall be preserved for the area within thirty (30) feet of the southern and eastern property lines in the R-1T zone.
 - b. Within these areas, only damaged or diseased trees may be removed, but only with the permission of the Urban Forester. If removed, they shall be replaced in equal number to preserve the existing tree canopy and buffer.

These conditional zoning restrictions are appropriate and necessary for the following reasons:

1. Preservation of the existing tree canopy located adjacent to the Ethington & Ethington property will be ensured.
2. These conditions will minimize the impacts of new development on the remaining agricultural use adjacent to the subject property.

b. REQUESTED VARIANCES

1. Reduce the required rear setback from 25 feet to 10 feet along the northwestern edge of the property.
2. Reduce the required side setback from 25 feet to 15 feet along the southwestern edge of the property for Lot 8.
3. Reduce the required front setback from 30 feet to 10 feet for Lot 9.

The Zoning Committee Recommended: **Approval of the requested variances**, for the reasons provided by staff.

The Staff Recommended: **Approval**, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the

* - Denotes date by which Commission must either approve or disapprove request.

character of the general vicinity. In particular, granting the requested front yard variance for Lot 9 will allow the character to be consistent between the single family home and the surrounding townhouses. Adequate vegetative buffers will remain to mitigate the need for an increased setback along the northwestern and southwestern property lines.

- b. Granting these requests will not allow an unreasonable circumvention of the Zoning Ordinance, but rather a design response to the existing site characteristics, such as the existing tree line along the shared property boundary.
- c. The special circumstances that apply to the subject property that serve to justify the variances are the existing trees and the fact that the one detached unit will be of similar size and layout as the surrounding townhomes, except that it will not share a common wall with another dwelling unit.
- d. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship to the applicant, and would not likely lead to a better design of the property. Approval of the requested variances will actually lessen the impact on the adjoining agricultural property by eliminating the approved driveways which were originally proposed at the rear of the new structures.
- e. The circumstances surrounding this request are not the result of actions taken by the applicant since the adoption of the Zoning Ordinance, as both the subject and surrounding properties are currently vacant in this vicinity.

This recommendation of approval is made subject to the following conditions:

- a. Provided the Urban County Council rezones the property R-1T; otherwise, any Commission action of approval of this variance is null and void.
 - b. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
 - c. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
- c. ZDP 2013-15: ETHINGTON & ETHINGTON PROPERTY (BOWMAN HOUSE) (AMD) (4/7/13)* - located at 4145 Harrodsburg Road.
(Wheat & Ladenburger)

Note: The Planning Commission postponed this plan at their February 28, 2013, meeting. The purpose of this amendment is to rezone the property and add six additional townhouse units.

The Subdivision Committee Recommended: Postponement. There were questions regarding the detached dwelling unit proposed in the R-1T zone.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
7. Division of Waste Management's approval of refuse collection.
8. Correct notes #6 and #7.
9. Indicate that this is an amended plan in the title block.
10. Add purpose of amendment note.
11. Denote variances approved by the Commission, as necessary, prior to plan certification.
12. Clarify existing and provided tree canopy information and calculations.
13. Addition of conditional zoning restrictions, as necessary.
14. Discuss proposed driveway widths.
15. Discuss proposed screening along R-1D property line.
16. Discuss sidewalks and possible need for waiver.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He requested a one-month postponement of this item.

Citizen Comment: There were no citizens present to comment on this item

Action: A motion was made by Ms. Plumlee, seconded by Mr. Penn, and carried 9-0 (Roche-Phillips and Wilson absent) to postpone MARV 2013-3 to the April 25, 2013, Planning Commission meeting.

3. PLAN 2013-17F: DISTILLERY DISTRICT (5/5/13)* - located at 1200 Manchester Street.
(Council District 2)

(2020 Land Surveying)

* - Denotes date by which Commission must either approve or disapprove request.

Note: The Planning Commission postponed this plan at their March 14, 2013, meeting. The purpose of this final record plat is to subdivide one lot into three lots.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
9. Denote 20' building line along Manchester Street frontage.
10. Denote: This property shall be developed in accordance with the approved final development plan.
11. Correct purpose of plat note.
12. Correct site statistics.
13. Provided the Planning Commission grants a waiver to Article 4-7(d)(1) - Certification of Substantial Completion.
14. Resolve floodplain configuration adjacent to CSX Railroad.
15. Resolve timing of street improvements (TIF).

Staff Comments: Mr. Martin stated that the staff had received a written request from the applicant to postpone this item for two weeks.

Action: A motion was made by Mr. Penn, seconded by Ms. Beatty, and carried 9-0 (Roche-Phillips and Wilson absent) to postpone PLAN 2013-17F to the April 11, 2013, Planning Commission meeting.

- IV. LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, March 7, 2013, at 8:30 a.m. The meeting was attended by Commission members: Will Berkley, Mike Owens, Carolyn Plumlee, Frank Penn and Karen Mundy. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Chris Taylor, Dave Jarman, Denice Bullock, Cheryl Gallt and Barbara Rackers, as well as Captain Charles Bowen and Lieutenant Greg Lengal, Division of Fire; David Lyons, Division of Police and Tracy Jones, Department of Law. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.
2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.

- V. ZONING ITEMS** - The Zoning Committee met on Thursday, March 7, 2013, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Mike Cravens, Lynn Roche-Phillips, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

- B. FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS** – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

Note: Ms. Roche-Phillips and Mr. Wilson arrived at this time.

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. AU ASSOCIATES, INC., ZONING MAP AMENDMENT & GARDENSIDE CABANA CLUB – PHASES 2 & 3 (PARKSIDE DEVELOPMENT) ZONING DEVELOPMENT PLAN

- a. MAR 2013-6: AU ASSOCIATES, INC. (5/5/13)* - petition for a zone map amendment from a Professional Office (P-1) zone to a Planned Neighborhood Residential (R-3) zone, for 4.09 net and gross acres, for property located at 1060 Cross Keys Road (a portion of).

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan recommends Semi-Public Facilities (SP) future land use for the subject property, recognizing its former use as the Cross Keys YWCA. The petitioner has requested a Planned Neighborhood Residential (R-3) zone in order to provide residential housing consistent with the density of the remainder of the subject property, as well as surrounding properties.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reasons:

1. The requested Planned Neighborhood Residential (R-3) zoning is appropriate and the Professional Office (P-1) is now inappropriate for the rear portion of 1060 Cross Keys Road, for the following reasons:
 - a. Since dwelling units are a permitted use in the P-1 zone for the second floor and above (if professional office uses are proposed on the first floor), some level of residential use would be allowed under the current zoning. However, such a mixed-use project would not be feasible at this location, given the property's limited access and visibility.
 - b. The existing P-1 zone is not appropriate for the subject property because of the limited access to the property. Existing access to the property is from the first phase of the development. With no direct access to a public street, the site does not have adequate access to foster successful professional office uses.
 - c. The proposed R-3 zone and multi-family residential development are very compatible with the surrounding area. The largest non-residential land uses in the immediate area are James Lane Allen Elementary School and the Gardenside Shopping Center, both of which are highly compatible with the residential development proposed at this location.
 - d. The Plan recommends High Density Residential land use to the north and east of the subject property, defined at 10 to 25 dwelling units per net acre. In comparison, this development proposes 17.6 dwelling units per net acre.
 2. The 2012 Comprehensive Plan's Themes, Goals and Objectives are supportive of the proposed zone change request. The Plan's mission statement seeks to "provide flexible planning guidance;" and the proposed change is supported by Theme A.1.b., which encourages housing near employment and commercial areas, as well as Theme A.2.a., which encourages identifying opportunities for appropriate infill that respects the area's context and design features.
 3. This recommendation is made subject to the approval and certification of ZDP 2013-23: Gardenside Cabana Club (Parkside Development), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. ZDP 2013-23: GARDENSIDE CABANA CLUB (PARKSIDE DEVELOPMENT) (5/5/13)* - located at 1060 Cross Keys Road.
(Kleingers & Associates)

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Delete notes #11, #16, & #17.
7. Revise note #14 to include Article 6-10 of the Land Subdivision Regulations.
8. Correct Maywick View Lane cross-section and denote location on plan.
9. Add Cross Keys Road cross-section.
10. Clarify area proposed for ingress and egress easement (to eliminate actual parking spaces).
11. Denote number of bedrooms proposed and related off-street parking requirements.

* - Denotes date by which Commission must either approve or disapprove request.

12. Clarify existing tree canopy information (existing tree species).
13. Denote the number of stories proposed (3).
14. Addition of typical parking space and drive aisle dimensions.
15. Clarify vicinity map.
16. Document ability to meet Article 21-14(e) of the Zoning Ordinance.
17. Resolve proposed lotting at the time of a Final Development Plan.
18. Resolve proposed lack of on-site storm water detention at the time of a Final Development Plan.

Zoning Presentation: Mr. Taylor presented the staff's zoning report, briefly orienting the Commission to the location of the subject property east of Alexandria Drive along Maywick View Lane and just to the south of Cross keys Road. He noted that there is an easement area, containing a small utility structure, which is fully enclosed by the subject property. That easement area is not proposed for rezoning. In the vicinity of the subject property are Phase I of the original development, which is adjacent to the subject property, and Gardenside Shopping Center, which is zoned B-1, to the south and west of the property. To the north and east are properties zoned R-3, which are developed with multi-family housing.

Mr. Taylor stated that the proposed rezoning represents the second and third phases of the development that began on the adjacent P-1 property, which has frontage along Cross Keys Road. Using an aerial photograph, Mr. Taylor noted the location of the existing parking lot on that parcel, through which access is proposed to serve the subject property. There is no access proposed to Maywick View Lane, due to a grade change on the subject property and that roadway's status as a private access easement at this location. Following the presentation of the staff report at the Zoning Committee meeting, the petitioner revised their development plan; they are now proposing to construct 72 dwelling units, with 143 bedrooms and 123 off-street parking spaces, on the subject property.

Mr. Taylor stated that the 2007 Comprehensive Plan recommended Semi-Public Facilities land use for the subject property, in recognition of the long-standing YWCA facility on the site. Thus, the proposed R-3 zoning could not be found to be in agreement with the Land Use Element of the 2007 Plan. The 72 dwelling units proposed would result in a residential density of 17.6 dwelling units per acre, which would fall within the Comprehensive Plan's High Density Residential land use category. Mr. Taylor explained that residential units are permitted in the P-1 zone, provided that the Professional Office uses are located on the first floor of the building, and residential uses on the second floor and above. Some residential development would therefore be allowed on the subject property under the existing P-1 zoning. However, the petitioner contends that, given the limited access and visibility of the subject portion of the site, a mixed-use project would not be viable at this location. The staff agreed with that contention, and believes that the proposed residential development would be highly compatible with the largest surrounding land uses in the area, including the Gardenside Shopping Center and James Lane Allen Elementary School. The staff and the Zoning Committee recommended approval of this request, for the reasons as listed in the staff report and on the agenda.

Commission Questions: Mr. Penn asked if the access easement will be the only means of ingress/egress for the subject property. Mr. Taylor answered that it is proposed to be the sole access to the property, and added that it was included as part of the development plan for the first phase of this development. Mr. Penn asked if the final development plan for the property would include details about traffic circulation on the property. Mr. Taylor responded affirmatively.

Development Plan Presentation: Mr. Martin presented the corollary zoning development plan, noting that revised conditions for approval had been distributed to the Commission members prior to the start of the hearing. He stated that Maywick View Lane, which is located adjacent to the subject property, is public near the Wendy's restaurant and Alexandria Drive, but is private at the location of the subject property.

The Staff Recommends: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
- ~~6. Delete notes #11, #16, & #17.~~
- ~~7. Revise note #14 to include Article 6-10 of the Land Subdivision Regulations.~~
- ~~8. Correct Maywick View Lane cross-section and denote location on plan.~~
- ~~9. Add Cross Keys Road cross-section.~~
- ~~10. Clarify area proposed for ingress and egress easement (to eliminate actual parking spaces).~~
- ~~11. Denote number of bedrooms proposed and related off-street parking requirements.~~
6. 12. Clarify existing tree canopy information (existing tree species).
- ~~13. Denote the number of stories proposed (3).~~
- ~~14. Addition of typical parking space and drive aisle dimensions.~~
- ~~15. Clarify vicinity map.~~

- 7. 46. Document ability to meet Article 21-14(e) of the Zoning Ordinance.
- 8. 47. ~~Resolve~~ Denote that proposed lotting will be addressed at the time of a Final Development Plan.
- 9. 48. ~~Resolve proposed lack of~~ Denote that on-site storm water detention will be addressed at the time of a Final Development Plan.

Mr. Martin stated that the petitioner is proposing to construct three apartment buildings each in Phases 2 and 3 of the proposed development, for just over 42,000 square feet of building area in each phase. Referring to the rendered development plan, he noted the location of the proposed 123 off-street parking space, which would exactly meet the parking requirements for the property, after allowable reductions are taken for the provision of bicycle racks. Mr. Martin said that the development plan also includes provisions for greenspace, with Tree Protection Areas designated along the perimeter of the property.

Mr. Martin said that this current version of the development plan was the result of a revision following the Subdivision Committee meeting, which prompted the drafting of the revised conditions. He noted that the revised plan addressed several of the original "clean-up" conditions; the remaining conditions include some other typical items that need to be addressed prior to certification of the plan. New condition #7 refers to the need for the plan to meet the requirements of Article 21-14(e) of the Zoning Ordinance, which relates to provision of an account for the necessary reproducible for the plan. Condition #8 relates to the need for the petitioner to file a preliminary subdivision plan in order to subdivide the property, which could be done at the time of a Final Development Plan. Mr. Martin said that condition #9 would require documentation of the need for stormwater detention at the time of the Final Development Plan. A previous plan for the property did include onsite detention, but the current plan does not, and the staff has been informed that the petitioner intends to seek relief from that requirement under the provisions of the Stormwater Manual. The petitioner has already met with staff of the Division of Engineering, and has submitted preliminary calculations for their review.

Petitioner Representation: Darren Eyre, Kleingers Associates, was present representing the petitioner. He stated that the petitioner was in agreement with the staff's recommendations, and that he was available to answer questions from the Commission.

Citizen Support: There were no citizens present in support of this request.

Citizen Objection: Robert Ely, 1814 Parkers Mill Road, stated that the rendered map to which the staff referred during their presentation was incorrect, in that two of the parcels were noted as being included in the Gardenside Shopping Center when they actually are not part of that development. He said that his property, which contains an office building with several tenants, is the closest parcel to the subject property. Mr. Ely stated that his primary concern about the proposed rezoning is the use of Maywick View Lane, which is part of his property, as a "playground." He said that he believes that, should the Commission choose to rezone the property to R-3, they should require some type of buffering between the professional offices on his property and the proposed residential development. In addition, Mr. Ely believed that, although he is not opposed to the proposed residential development, the existing P-1 zoning might result in the location of more offices uses on the first floor, which could provide a higher standard of maintenance for the property and its tenancy. He also asked that, should the Commission choose to rezone the property to R-3, they require that the number of dwelling units be limited to 73, as currently proposed. Mr. Ely added that he did not believe that the proposed residential development should be allowed to have a negative impact on his office building such that it causes the loss of tenants.

Mr. Ely stated that he is also concerned about the possibility of additional traffic at the Cross Keys Road/Alexandria Drive intersection, which was recently identified as one of the most dangerous intersections in the city. He said that, if the proposed traffic circulation for the subject property includes any route that he believes might result in additional cut-through traffic on his property, he will install concrete traffic barriers.

Mr. Owens asked about the exact location of his property. Mr. Ely identified it, and reiterated that Maywick View Lane is not an access easement or any type of roadway; rather, it is part of the parking lot for his office building.

Mr. Ely asked if it would be possible, as part of this rezoning request, to require some type of separation between the proposed residential development and the business uses along Maywick View Lane. Mr. Owens noted that it appeared that vehicular traffic would be required to access Cross Keys Road, rather than Maywick View Lane. Mr. Ely responded that he was concerned about pedestrian as well as vehicular traffic on his property.

Staff Rebuttal: Mr. Sallee stated that it was the staff's understanding that Maywick View Lane was an access easement, based on plans from the 1960s or 1970s. He added that the Commission could consider imposing fencing or landscaping requirements as part of their approval of the development plan, or even conditional zoning restrictions, for the subject property.

* - Denotes date by which Commission must either approve or disapprove request.

Discussion: Mr. Owens asked if the petitioner would be required to come back before the Planning Commission in order to make any changes to the development plan. Mr. Sallee answered that, in order to develop any use in Phase 2 or 3, a new final development plan would need to be brought before the Planning Commission. In the absence of conditional zoning restrictions to limit the number of dwelling units on the property, any such development plan could propose more units, but it would require the approval of the Planning Commission.

Ms. Beatty asked Mr. Sallee to point out the location of Mr. Ely's property line, and the Maywick View Lane access easement. Mr. Sallee used the rendered zoning map to note those locations, adding that Mr. Ely was correct that Maywick View Lane is a public street from Alexandria Drive up to the Wendy's restaurant, at which point it becomes a private access easement.

Mr. Penn asked if Mr. Ely's concerns would be best addressed at this time, or at the Final Development Plan stage. Mr. Sallee responded that it seemed that Mr. Ely had concerns related to two issues. Mr. Penn asked Mr. Sallee to help the Commission understand which concerns should be addressed at this time, and which would be best deferred to the Final Development Plan. Mr. Sallee answered that fencing and landscaping are typically development plan issues, but concerns about the proposed density on the property could be addressed during consideration of the zone change. Mr. Penn asked when the concerns about the access easement could best be addressed. Mr. Sallee responded that no changes are currently proposed to the access easement, noting that the subject property is proposed to access only Cross Keys Road, and not Maywick View Lane.

Applicant Rebuttal: Holly Wiedemann, owner and developer of the subject property, stated that the first phase of this development is a source of pride and is an asset to the neighborhood, so she did not understand Mr. Ely's concerns. She said that Maywick View Lane is a publicly-accessed, private road, which Mr. Ely does not own, and which has existed in its current configuration for decades. She added that, if Mr. Ely would like install a fence on his property, he had the right to do that, but she did not believe that it would be necessary, since adequate parking is included in their proposed development.

Commission Questions: Ms. Mundy asked, since the petitioner is proposing a landscape buffer around some portions of the perimeter of the property, if that buffer could be extended to the area between the subject property and Mr. Ely's property. Ms. Wiedemann answered that, during the construction of Phase 1 of the project, the petitioner planted more than 120 trees and removed a great deal of underbrush, since the property had been condemned and in disrepair for sometime before it was sold. She said that, due to the large amount of pedestrian traffic in the area, the proposed development was designed to allow pedestrians to pass through freely. The Phase 1 building provides office space on the first floor for some community agencies, and Ms. Wiedemann believes that it is important to allow residents free access to those offices, as well as to the stores and bus stops along Alexandria Drive. She added that it was her understanding that the Maywick View Lane access easement was owned by the neighborhood association, rather than Mr. Ely, and she had no way to control whether or not residents of the proposed development parked there. Ms. Wiedemann also opined that the installation of a fence along the boundary with Mr. Ely's property "would disrupt the entire neighborhood."

Mr. Penn stated that he was still trying to determine whether the issues raised needed to be addressed as part of this rezoning request, but he believed that it would be more appropriate to treat these concerns as development plan issues. Mr. Owens agreed.

Citizen Rebuttal: Mr. Ely stated that, two years ago, he parked a truck trailer on Maywick View Lane; the police and his Council member told him to remove it, but then were informed that the trailer could remain because that roadway was his private property. He said that the only easement depicted on the plat for 1750 Alexandria Drive is a utility easement that does not include the area known as Maywick View Lane. Mr. Ely maintains that the portion of Maywick View Lane adjacent to the subject property is his private property, since he paid for it and holds the deed to it.

Mr. Ely stated that, although he is not opposed to the proposed development itself, he does not believe it is not fair to suggest that pedestrian traffic from the proposed development should be able to freely access his parking lot as a cut-through. He asked that, if the Planning Commission chooses to approve the proposed rezoning, they recognize the use of his property for professional offices, and take measures to prevent the use of his property by the residents of the proposed development.

Commission Comments: Mr. Owens stated that he believed that most of Mr. Ely's concerns could be addressed on the Final Development Plan for the subject property.

Mr. Ely asked if the proposed rezoning could be approved dependent upon a requirement to provide some type of barrier between the two properties. He said that, if the project makes it to the Final Development Plan stage without such a requirement, "it would be too late." Mr. Owens reiterated that Mr. Ely's concerns could be addressed on the Final Development Plan.

Mr. Berkley asked if there were any zone-to-zone screening requirements for the subject property. Mr. Sallee answered that there are zone-to-zone screening requirements between residential, office, and business zones, but there is an exception granted for property frontages. He explained that, since the subject property has a frontage along Maywick View Lane, even though it does not have access to that roadway, it might be exempt from the zone-to-zone screening requirements, even though Maywick View Lane is private. Mr. Sallee added that the Commission could require screening as a condition to the development plan or via conditional zoning restrictions, if they so chose.

Mr. Brewer said that conflicting information had been presented with regard to the status and ownership of Maywick View Lane, and asked for clarification. Mr. Sallee responded that Maywick View Lane is only public from its intersection with Alexandria Drive to a point at the corner of the subject nearest the Wendy's restaurant. From that point north, it is a private access easement, used to provide access to the properties to the north of the Wendy's. Mr. Brewer asked if the staff could provide documentation of the ownership of the easement, since it seemed to be questionable. Mr. Sallee answered that the staff was currently researching that question in the planning office, since it pertained to off-site property, and they hoped to have an answer shortly before the conclusion of this hearing.

Mr. Penn asked if it would be more appropriate and effective to require some type of barrier as part of the rezoning request, or at the Final Development Plan stage. Mr. Sallee answered that some issues, like the continuation of a sidewalk, are best considered on the Final Development Plan, since, at this point in the process, the configuration depicted on the preliminary plan could change. He said that, since the property boundary is known and not likely to change, a fence or landscape barrier could be required as part of the rezoning, but it could also be deferred to the Final Development Plan as well. Mr. Penn asked if the Commission had the ability to require zone-to-zone screening. Mr. Sallee answered that the Commission did have that ability.

Ms. Mundy stated that she was concerned that, if pedestrians continue to be allowed to cross Mr. Ely's property, it could become a prescriptive right-of-way that would have to be left open for that use. Mr. Sallee replied that the staff's understanding is that, currently, the area in question is an access easement, and has been for some time. Ms. Mundy said that she was not referring to Maywick View Lane, but rather to Mr. Ely's property, on which his professional office building is located. She added that she believed the project would be attractive and beneficial to the neighborhood, but surrounding property owners also needed to be protected.

Ms. Roche-Phillips stated that she believed that, if the concern was the creation of a prescriptive easement, it should be incumbent upon Mr. Ely to install a barrier to prevent pedestrians from crossing his property. She said that construction of such a barrier on Mr. Ely's property would constitute an off-site improvement, and she did not believe that it was within the Commission's purview to require such. However, the Commission could require landscaping or buffering on the subject property to help mitigate noise or similar nuisances, which Ms. Roche-Phillips believed would be appropriate in this case.

Mr. Cravens stated that Mr. Ely's property is already developed, and his business has been in operation there for some time, while the proposed development is not yet constructed. Mr. Cravens believed that the petitioner should be required to manage their property in order to prevent access to Mr. Ely's property. He added that long-term use of Mr. Ely's property could constitute "implied consent" of that use. Mr. Cravens opined that it would be best to require a fence at this point in the proposed development, rather than at the time of a Final Development Plan.

Mr. Owens asked, with regard to the small area on the subject property that is not proposed for rezoning, if it was some type of easement. Mr. Sallee answered that there is a small utility building in that area, along with a small paved area for vehicle parking. Mr. Owens asked if that area was fenced. Mr. Sallee responded that it was not fenced from Maywick View Lane, but he could not recall from his site visit whether it was fenced to the rear. Mr. Owens asked whether, if a fence is required, it would have to go around that area as well, even though it is not part of this rezoning request. Mr. Sallee answered that, in order to unencumber the utility's property, the fence would need to include that area as well.

Staff Exhibit: At this time, Mr. Martin explained that the staff had located the most recent plat for the Maywick View Lane access easement, which was prepared by Endris Engineering and signed and recorded on October 31, 2008. He said that that plat makes reference to Maywick View Lane as "a right-of-way and utility easement, 37' wide, set forth in Deed Book 791, page 568; and Deed Book 2698, page 686."

Mr. Sallee added that, in some similar situations where there was still uncertainty about development plan issues at the time of rezoning, a note was added to the development plan requiring that the concerned parties be contacted at the time of the filing of a Final Development Plan for the property. He said that such a note could provide an opportunity for Mr. Ely to be able to review the sidewalk, landscaping and fencing proposed at the time of filing of a final plan.

* - Denotes date by which Commission must either approve or disapprove request.

Applicant's Closing Remarks: Shantelle Noble, City Studios Architecture, stated that the proposed Phase 2 and 3 buildings would sit at a lower elevation than Maywick View Lane, and require the construction of a retaining wall, so the elevation change could provide some a natural buffer to help mitigate Mr. Ely's concerns.

Discussion: With regard to the staff's revised conditions for approval of the zoning development plan, Ms. Beatty asked if stormwater detention and traffic circulation needed to be resolved as part of the rezoning, or if they could be addressed at the time of the Final Development Plan. Mr. Martin answered that they could be resolved at the Final Development Plan stage, and added that the staff could research accident data for the Cross Keys Road/Alexandria Drive intersection, and present it at that time as well.

Mr. Penn asked how a condition should be worded in order to require a barrier or impediment to foot traffic onto the adjoining property at the Final Development Plan stage. Mr. Martin answered that a condition could be added to denote that that issue be resolved at the time of the Final Development Plan.

Zoning Motion: A motion was made by Ms. Beatty and seconded by Ms. Mundy to approve MAR 2013-6, for the reasons provided by staff.

Discussion of Motion: Ms. Roche-Phillips asked Ms. Beatty if she had intended to include a conditional zoning restriction to limit the density on the property to the number of units proposed. Ms. Beatty responded that she had intended to include a conditional zoning restriction limiting the number of dwelling units on the subject property to 72.

Mr. Owens asked Ms. Beatty to restate her motion.

Ms. Beatty stated that her motion was for approval of the proposed zone change, for the reasons provided by staff, including a conditional zoning restriction to limit the number of dwelling units to 72, because there is a need to buffer the nearby professional offices. Ms. Mundy concurred

Zoning Action: Ms. Beatty's motion carried, 11-0.

Development Plan Action: A motion was made by Ms. Beatty and seconded by Mr. Wilson to approve ZDP 2013-23, with the nine revised conditions as recommended by staff, including a new #10 to read: "Resolve pedestrian traffic patterns as related to adjacent properties."

Legal Comment: Ms. Jones recommended adding "at the time of the Final Development Plan" to the new condition #10. Ms. Beatty and Mr. Wilson agreed to that addition to the motion.

Applicant Comment: Ms. Wiedemann stated that anyone could walk or drive down Maywick View Lane, and she did not understand what the Commission hoped to accomplish with the addition of condition #10.

Commission Question: Mr. Cravens asked if Mr. Sallee could clarify his comment with regard to the possible addition of a note requiring that Mr. Ely be notified of the filing of a Final Development Plan. Mr. Sallee stated that notes have been added in similar situations where there was a high level of citizen interest in a particular development. He said that the Commission had the ability to add such a condition to this plan. Mr. Cravens stated that he would like to add such a condition in the form of an amendment to Ms. Beatty's motion.

Mr. Wilson, Parliamentarian, stated that Mr. Cravens could make such an amendment to Ms. Beatty's motion; he explained that the Commission would need to vote on the amendment, and then the motion.

Mr. Penn asked if it would be appropriate to name Mr. Ely in that condition, or refer to the "adjoining property owner." Mr. Cravens stated that he would agree to that change in the amendment to the motion.

Amendment of Motion: A motion was made by Mr. Cravens and seconded by Ms. Mundy to add a note to the development plan to notify the adjoining property owner to the west upon the filing of a Final Development Plan for the subject property.

Discussion of Amendment: Mr. Brewer asked why Mr. Cravens did not want to notify all of the adjoining property owners, rather than just the one to the west. Mr. Cravens responded that Mr. Ely had attended the meeting and voiced his concern, so he believed that he deserved to be notified of future development on the subject property.

Ms. Beatty stated that the addition of condition #10 was not intended to be advantageous or disadvantageous to either the petitioner or the adjoining property owner; rather, to ensure that the pedestrian connectivity in the area is resolved at the time of the Final Development Plan. She said that, the way the condition is worded, all of those property owners should be involved upon the filing of that plan, and the openness and walkability of the area can be maintained.

Amendment of Motion Action: Mr. Cravens' motion carried, 8-3 (Beatty, Brewer, and Roche-Phillips opposed).

Summary of Development Plan Motion: Mr. Owens stated that the Commission would now vote on the original motion for approval of ZDP 2013-23, with the nine conditions as recommended by staff; adding a new condition #10 as previously read by Ms. Beatty; and adding a new condition #11 to require the notification of Mr. Ely upon the filing of any plan or amendment for the subject property.

Discussion of Motion: Ms. Roche-Phillips stated that she did not believe it was appropriate for the Planning Commission to regulate how pedestrians move between pieces of property. She said that the Commission was charged with reviewing the development plan and ensuring pedestrian and vehicular connectivity to and from the site, but any off-site issues should not be their concern.

Development Plan Action: Ms. Beatty's motion carried, 9-2 (Brewer and Roche-Phillips opposed.)

VI. COMMISSION ITEMS

- A. INITIATION OF A ZONE CHANGE FOR THE NEWTOWN PIKE EXTENSION HOUSING COMPONENT** – The staff will request that the Commission initiate a zone change from I-1 to R-3 and from R-3 to R-1T for properties at 835 – 856 DeRoode Street and adjacent former railroad right-of-way.

Mr. Sallee stated that the staff had distributed to the Commission members two items related to this request for initiation: a timeline of the development of the Southend Park neighborhood, and a ZOMAR plat of that area. He said that the staff had presented this item at the Commission's work session prior to this meeting one week ago.

Mr. Sallee stated that the staff was requesting initiation of this zone change in order to further facilitate the residential redevelopment of the Southend Park area, which is part of the overall Newtown Pike extension project. He noted that, in the late 2000s, the Planning Commission reviewed a zone change for the subject area, which is located just south of the Versailles Road/High Street viaduct, adjacent to the railroad line that the viaduct crosses. In the years since that rezoning, the Transportation Cabinet has acquired additional property between the newly constructed sound wall barrier and the new housing development. The Transportation Cabinet would now like to develop a small portion of that property, which is one of the reasons for this request. The other is a proposal to change the zoning from R-3 to R-1T because of some lot size issues associated with moving two duplexes from the south end of the proposed development to the north end. The area proposed for rezoning encompasses just over two acres of property. Mr. Sallee concluded by noting that, should the Commission choose to initiate this rezoning, the requisite public hearing would likely be at least two months away.

Commission Question: Mr. Berkley asked, with regard to William Dunn, who is listed as one of the property owners, if he was a party to this request, or if his property was in condemnation. Mr. Sallee answered that the staff's understanding is that the property is in condemnation, and that the Transportation Cabinet has a "right of entry" for the property, but that action has not been finalized. He added that that was one of the reasons why the Commission was being asked to rezone the entire property.

Action: A motion was made by Mr. Penn, seconded by Mr. Berkley, and carried 11-0 to initiate the proposed rezoning as requested by staff.

- VII. STAFF ITEMS** – No such items were presented.

- VIII. AUDIENCE ITEMS** – No such items were presented.

IX. MEETING DATES FOR APRIL, 2013

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	April 4, 2013
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	April 4, 2013
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	April 11, 2013
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	April 18, 2013
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	April 24, 2013
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	April 25, 2013

- X. ADJOURNMENT** – There being no further business, Chairman Owens declared the meeting adjourned at 2:44 p.m.